

This material is intended as an overview
and is not meant to supplant the actual statutes or regulations.
Further information may be obtained by contacting
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NURSING LICENSURE: DISCIPLINARY PROCESS AND PROCEDURES



The Kentucky Board of Nursing protects public health
and welfare by development and enforcement of
state laws governing the safe practice of nursing.

In order to protect the public, the General Assembly of Kentucky mandates that the practice of nursing be regulated and controlled according to the *Kentucky Nursing Laws* and by the regulations of the Kentucky Board of Nursing (KBN). The purpose of KBN is to assure that safe and effective nursing care is provided for the citizens of Kentucky. If a violation of the *Kentucky Nursing Laws* is alleged, the matter is referred to KBN for investigation and resolution.

How does a nurse come to the attention of the Board?

Kentucky has a law [KRS 314.031(4)] which requires any nurse, employer of nurses, or any person having knowledge of a nurse acting in a manner inconsistent with the practice of nursing, to report such actions to KBN. Most often, it is an employer who contacts the KBN office. It is also possible for KBN to initiate action based on written or telephone complaints, or by entering an administrative complaint, such as in the case of a licensee failing to obtain required continuing education, practicing nursing without a license, failing to pay for a KBN issued scholarship, or submitting a bad check to KBN.

What types of activities place a nursing license in jeopardy?

While not an exhaustive list, some examples are:

- ◆ Conviction of a misdemeanor or felony involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state of the United States.
- ◆ Fraud or deceit in procuring or attempting to procure a nursing license.
- ◆ Acting in a manner inconsistent with the practice of nursing.
- ◆ Practice as a nurse without a current license or advanced registered nurse practitioner registration.
- ◆ Abuse of controlled substances or misuse or misappropriation of any drugs placed in the custody of the nurse for medication or use of others.
- ◆ Falsification or in a negligent manner making incorrect entries, or failure to make essential entries on essential records.
- ◆ Action on a nursing license in another jurisdiction.
- ◆ A violation of any section of the *Kentucky Nursing Laws*.

Final KBN actions are reported to the National Council of State Boards of Nursing (NCSBN) Data Bank, the Office of the Inspector General, if certain criteria is met, and published in KBN's newsletter, *KBN Connection*. Copies are available to the public.

What other costs are involved?

In the event KBN takes any action on a license after a hearing, it may assess all or part of that expense against the nurse. This would include the cost of a court reporter that prepares the transcript, any civil penalty imposed by KBN (up to \$10,000), and any other costs associated with the hearing process.

What happens when a complaint is lodged against a nurse?

The facts will be reviewed. If there is evidence of a possible violation of the *Kentucky Nursing Laws*, KBN will institute an investigation, and the nurse is sent a Notice of Complaint Letter along with a copy of the complaint that asks the nurse to submit a letter of explanation to KBN within 15 days. Upon receipt of the letter of explanation, the information is reviewed and placed in the nurse's investigative file. A second letter is sent to the nurse informing him/her that a nurse investigator will be assigned to the case. The investigator may send a letter to the nurse to schedule an investigative meeting, if necessary, at the KBN office in Louisville. It is very important to keep an updated address on file with KBN.

The investigation may include ordering the nurse to have a mental health and/or a chemical dependency evaluation, and sending a subpoena for personnel files from the appropriate facilities.

An immediate temporary suspension of the nurse's license can be issued in cases where the licensee is clearly an immediate danger to the public, fails to obtain an evaluation ordered by KBN, or fails to submit sufficient funds for the renewal of the nursing license.

While the nurse is under investigation, the nurse can work as long as his/her license is current. An employer verifying the license is told the current status of the license and that the license is under investigation. However, no other information about the investigation can be shared. The employer can submit a written request to the KBN office to be notified of the outcome of the investigation. Once the investigation is complete, KBN staff will notify them of the resolution.

How are complaints resolved?

- ◆ **Dismissal:** The complaint is dismissed for lack of evidence.
- ◆ **Letter of Concern:** A letter is mailed to the nurse expressing concern regarding his/her actions. This is not disciplinary action.
- ◆ **Consent Decree:** This is an agreement between the nurse and KBN that is used in specific cases involving working with a lapsed license, bad checks, or failure to meet continuing education/competency requirements. This is not formal disciplinary action.
- ◆ **Agreed Order:** The nurse and KBN agree that the complaint is valid in whole or in part and agree to certain terms and/or conditions. This is formal disciplinary action against a nurse's license.
- ◆ **Hearing:** A formal trial-like procedure at which the case is presented to a KBN hearing panel.

What is an investigative meeting?

The investigative meeting is informal and is a time for the nurse to meet with investigative staff. The purpose of the investigative meeting is to gather the facts. It is to the nurse's advantage to be present for this meeting, as this is the nurse's opportunity to give KBN staff information about the allegations in the complaint. KBN staff will explain the disciplinary procedures and possible Board actions.

The nurse has the right to have an attorney present, although this is not required. KBN's prosecuting attorney will be present if an attorney accompanies the nurse.

What happens after the review/investigative meeting?

KBN staff will continue the investigation and may conduct a field investigation of the case in order to gather as much information as possible. After a thorough investigation, a settlement offer will be presented to the nurse, or the nurse investigator can present the information gathered to KBN's Credentials Review Panel for direction.

If the complaint is resolved with an Agreed Order or Consent Decree, it is signed and returned to the KBN office, and then presented to the KBN executive director for approval on behalf of the Board. The Agreed Order will be sent by certified mail and will contain terms and conditions for the disciplinary action. The Consent Decree will be sent by regular mail.

What is the Credentials Review Panel?

The Credentials Review Panel is a panel of three Board members that meets monthly to review submitted information and to direct KBN staff on how to resolve the complaint.

What happens if the nurse does not agree with the Board's offer?

If the nurse chooses not to accept the settlement offer, KBN will send a second document known as the Notice of Hearing and Statement of Charges. This notice formally charges the nurse with violating a specific section of the *Kentucky Nursing Laws* and advises the nurse of the general factual basis of the charges.

The nurse will generally receive notice of at least 20 days before the hearing date. A written answer must be sent by the nurse no later than 10 days prior to the hearing date. The hearing officer issues subpoenas for witnesses to testify on behalf of the nurse upon request.

What is a Pre-Hearing Conference?

A pre-hearing conference is a meeting between the nurse and/or the nurse's attorney (if applicable), the nurse investigator, the hearing officer, and the prosecuting attorney to discuss preliminary motions and issues about the hearing before the actual hearing date. The nurse can attend the pre-hearing conference via telephone if he/she requests it. Failure to attend the pre-hearing conference will result in a default ruling that cancels the hearing in favor of KBN.

How is the hearing conducted?

The nurse will appear before a hearing panel at the KBN office in Louisville and has the right to have an attorney present. The panel is made up of a hearing officer and two Board members. The hearing panel will hear the evidence presented by KBN's prosecuting attorney and by the nurse and/or the nurse's attorney. The panel then deliberates and makes a recommendation to the full Board based on the evidence presented. All hearings are open to the public.

When will the nurse know the outcome of a hearing?

During the hearing, a court reporter records everything that is said. The hearing officer must have the transcript of the hearing before the proposed decision is written. The proposed decision will be mailed to the nurse and/or the nurse's attorney within 60 days of receipt of the transcript. There is a period of 15 days to respond in writing if the nurse has any objections to the proposed decision.

Why is it called a proposed decision?

The proposed decision must go to the full Board at the next scheduled meeting. In a closed session, the Board members review the evidence that was presented at the hearing. A vote on the proposed decision is taken in open session and, if it passes, it becomes a final decision. The Board may accept the decision as proposed or modify it.

What if you disagree with the decision of the Board?

The decision may be appealed to the Jefferson Circuit Court but it must be done within 30 days from the date that KBN enters the Order. The judge will not retry the case but will review the transcript and pleadings. The Circuit Court decision may be appealed to the Court of Appeals and, possibly, the Kentucky Supreme Court.

What are the possible actions that can be taken against a nurse's license?

◆ Revocation

Loss of the right to practice nursing. A nurse may reapply for a license after a period specified by the Board's Order. The nurse is required to retake and successfully pass the National Council Licensure Examination.

◆ Suspension

Loss of the right to practice nursing for a specified amount of time. The Board's order will specify conditions which must be met for reinstatement of license, such as a current chemical dependency or mental health evaluation, counseling reports, random drug/alcohol screens, and letters of recommendation. A hearing may be required to consider reinstatement of a license.

◆ Limited License

May practice nursing in a restricted capacity determined by KBN. For example, restrictions may be placed upon where the nurse is allowed to practice, whether supervision of practice is required, whether the nurse may administer narcotics, or be allowed to administer any other medications.

◆ Probation

May continue to practice nursing subject to certain conditions determined by KBN. These conditions may include visits with KBN staff, drug/alcohol screens, and employer reports.

◆ Reprimand

Published disciplinary action that expresses concern about a nurse's actions. A reprimand does not impair the right to practice.

◆ Voluntary Surrender

The nurse agrees to surrender the license for a period of time with terms to be met for reinstatement. A voluntary surrender is done through an Agreed Order.

◆ Reinstatement Denied

Reinstatement of the license can be denied by KBN until specific conditions are met. Another hearing may be required.

◆ Licensure Denied

May result from a criminal conviction which has a bearing on qualifications to practice as a nurse, use of fraud or deceit to procure a license, or a violation which occurred during the time an applicant practiced with a temporary work permit.

◆ Civil Penalty

Fine of up to \$10,000 and is in addition to the other costs incurred. A date is set for when the civil penalty is due to be paid.